

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>July 30, 2014</u>
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KICKSTARTER, INC.,

Plaintiff,

v.

ARTISTSHARE, INC., *et al.*,

Defendants. :  
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11 Civ. 6909 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of courtesy copies of Defendants' Notice of Motion to Strike the Expert Report of Ethan Mollick and accompanying memorandum of law, as well as Plaintiff's July 24, 2014 letter concerning that motion, and Defendants' July 28, 2014 letter in response. After reviewing these materials and the relevant transcript, the Court concludes that Defendants have ignored the plain directives of this Court in filing their Motion to Strike, and will order that the Motion be itself stricken.

At the May 6, 2014 conference, the Court addressed precisely this issue, making clear that the parties would be required to combine all motions in a single brief and, more particularly, that there would not be separate briefing relating to the preclusion of expert testimony. (May 6 Tr. 4:21-8:3). After substantial colloquy with counsel for both parties, the Court stated that exactly four briefs were authorized: (i) Plaintiff's opening brief in support of its motion for summary judgment (with a 35-page maximum); (ii) Defendants' brief in opposition and in support of their cross-motion for summary judgment, which

might address Plaintiff's expert witness (also with a 35-page maximum); (iii) Plaintiff's brief in opposition and reply in support of its motion for summary judgment (with a 35-page maximum); and (iv) Defendants' reply brief in support of their cross-motion for summary judgment (with a 25-page maximum). (*Id.* at 23:14-18, 26:24-28:1; *see also id.* at 8:1-6 (confirming with defense counsel that issues regarding Plaintiff's expert witness would be "fold[ed] into your summary judgment brief")). The Court's May 7, 2014 Order confirmed the number of contemplated briefs and their respective page limits.<sup>1</sup>

Accordingly, it is ORDERED that Defendants' Motion to Strike the Expert Report of Ethan Mollick is hereby stricken from the record. It shall not be filed electronically along with the authorized summary judgment briefing, nor shall it be considered by the Court in deciding the parties' summary judgment motions.

The parties are reminded that no motions or papers associated with the parties' summary judgment motions shall be electronically filed on the docket until all motions are fully briefed on September 10, 2014.

SO ORDERED.

Dated: July 30, 2014  
New York, New York



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KATHERINE POLK FAILLA  
United States District Judge

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<sup>1</sup> The Court does not understand how Defendants could have left the May 7 pre-motion conference believing that they were authorized to file a second, separate brief on the expert witness issue. If Defendants truly believed it necessary to file a separate motion to strike expert testimony, they should have applied to the Court seeking leave to file such a motion.